IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1794 OF 2005

Latha Nayak ... Petitioner

V/s.

The Chairman, ... Respondents
Raghvendra Swamy Educational
Trust & 4 ors.

ALONG WITH

WRIT PETITION NO. 1796 OF 2005

Naseem Shaikh ... Petitioner

V/s.

The Chairman, ... Respondents
Raghvendra Swamy Educational
Trust & 4 ors.

ALONG WITH

WRIT PETITION NO. 1795 OF 2005

Sujada Pullot ... Petitioner

V/s.

The Chairman, ... Respondents
Raghvendra Swamy Educational
Trust & 4 ors.

Mr. Sureshkumar J. Panicker with Ms. Pallavi R. Vishwasrao and Ms. Bhavika S. Kawle for petitioners.
Mrs. A.B. Shah for respondent Nos. 1 to 3.
Mrs. A.K. Savla for respondent Nos. 4 & 5

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 29th September, 2006

P.C.

. Rule. Heard forthwith.

2. According to the petitioner in Writ Petition No. 1794 of 2005 she was appointed as a primary teacher on 24.07.1990. No separate order was issued making the petitioner permanent. The petitioner is however deemd to be permanent from 24.07.1997. She possesses qualification of B.A. B.Ed. Her service came to be terminated by a notice received by the petitioner on 15.06.2005 on two grounds. Firstly, that the petitioner was untrained, as she possessed the qualifications of B.A. B.Ed. and secondly on account of the decrease in the number of students she had became surplus. The petitioner was offered three months salary in lieu of notice.

3. According to the petitioner in Writ Petition No. 1795 of 2005 she joined on 17.02.2002 and according to her was made permanent on 13.06.1990. The petitioner is holding S.S.C. and diploma in craft. The services of the petitioner came to be terminated by a notice dated 13.06.2005 which was received by the petitioner on 15.06.2005. The

petitioner was informed that the petitioner was appointed as Assistant Teacher in primary section and that she was not qualified for the post. It was also set out that there was a decrease in number of students and she had became surplus. The petitioner was offered three months salary in lieu of notice.

4. According to the petitioner in Writ Petition No. 1796 of 2005 she was appointed and joined on 10.07.1995. No separate notice of permanency was given to the petitioner. The petitioner is deemed to be permanent as on 10.07.1997. The petitioner possesses the qualification of HSC and E.C.E. The petitioner was served with notice dated 13.06.2005. The petitioner has received that notice on 15.06.2005. In the notice, it was set out that the petitioner was appointed as Assistant Teacher and her qualifications are H.S.C. and E.C.E. and as such the petitioner was not qualified to hold post. It was further pointed out that there was decrease in the number of students and she had became surplus. The petitioner was offered three months salary in lieu of notice.

5. It is case of the petitioners in all the three petitions that they are relying on a judgment in **Mrs.**

Laxmi Harish Shrama V/s. Municipal Corporation of Greater Bombay, being Writ Petition No. 1879 of 1993 decided on 30th August, 2005, that even in a case of fall of division, it was not open to the management to terminate the services of the teachers without taking permission of the Education Officer. We may reproduce the relevant rule 22, of Appendix VII of the Grant-In-Aid Code, which reads as under :-

> "In cases of reduction of establishment owing to the reduction in number of classes or a considerable fall in the number of pupils, managements may, terminate the services of a permanent teacher after giving three month's notice. In such cases the principle of seniority shall ordinarily be observed, but if for any special reason this principle is proposed to be departed from by the management they shall obtain the prior approval of the Department."

. In other words, it would be clear that there is already a power conferred on the management to terminate the services of permanent teacher by giving three months notice in the event of reduction in the number of class or considerable fall in number of pupils. The permission in terms of the rule, as literally read is only in those cases, where the management wants to depart from the order of seniority. The learned Bench, however, proceeded to

examine the requirements of the number of students in a class and held that a reading would indicate, that even in such cases, prior permission must be taken and for that purpose relied on Rule 27 of Chapter I which sets out the maximum number of students to be admitted in one division. The learned Bench, considering the Rules held that the management erred in unilaterally deciding about the number of students in a division, nor could decide about decrease in number of teaching staff without prior approval in that regard by the Department and thereafter, considering other contentions advanced, set aside the order of termination. The learned counsel for the petitioners has relied on the said judgment.

6. On behalf of respondent management, two contentions have been urged. Firstly that the petitioners were not qualified. The issue of qualification has been considered by us while deciding Writ Petition No. 1792 of 2005. We have held that it is the qualifications under the provisions of Grant-in-Aid Code which alone are relevant and it is not open to the management to impose any other qualifications. Once that be the case, the three petitioners in terms of Rule 6 of Appendix VII of

Grant-In-AID Code possess the necessary qualifications. The termination as on that ground would therefore be arbitrary and without authority of the law. The issue of appeals being preferred has been considered and decided in Writ Petition No. 1792 of 2005. For the same reason we hold that there is no appeal available to the three petitioners in these three petitions and therefore, it is open to this Court to exercise our extra-oridinary jurisdiction, as there is no other remedy available to the petitioners. Even otherwise this would be a fit case for us to exercise our extra-oridnary jurisdiction.

7. The second issue is of termination of services on being rendered surplus. The only question which is for our consideration is the Judgment of this Court. As we have noted the terminations were effected and were served on petitioners on 15.06.2005. The judgment of this Court was delivered on 10th August, 2005. Even otherwise, in our opinion the judgment in Writ Petition No. 1879 of 1993 will have to be read down on the facts of this case, meaning thereby in case of termination on the ground of reduction in number of classes or students, if the management has terminated services of teachers, it is still open to

them for apply for post-facto approval to respondent No. 4. We may explain the position. On perusal of the rule, which we have quoted above, it would indicate on a literal construction, that discretion has been conferred on the management, to terminate the services of permanent teacher due to reduction in number of classes or considerable fall in number of teachers. The provision for number of pupils is set out in rule 27, which sets out that the maximum number of students in the class to be 40. It does not lay down the minimum number of students. It is further laid down that in respect of newly started classes, standards having less than 25 pupils on the rolls or average attendance of less than 20 in the case of day schools, shall not be granted recognition as a rule, except in special cases with the specific sanction of the Education Department. It is thus clear that there cannot be more than 40 students in one division. If there are more than 40 students in one division, it will be open on literal reading for the management subject to the provisions of Grant-In-Aid Code to open a new division. The question arises as to what happens if there be two existing divisions, as in the instant case and there are more than 25 students in each class or even if they fall below 25, are those

classes to be derecognised. What would be the basis for the management to consider whether there has been decrease in the number of students or a fall in number of classes. Considering that these are recognized primary schools, the local body must be given a say in these matters.

. In these circumstances, in our opinion, before the Management effects any termination on account of reduction in standards or number of students, they must necessarily first take permission of respondent No. 4. Once respondent No. 4 grants permission, it will be open to the Management to give effect to that order. In the cases, where the managements have not sought permission of respondent No. 4, before the judgment of this Court then they can apply for post-facto approval. In the event, approval is granted, it will be referable to the date of termination, because that will be the date for considering the fall in the number of students. In the event approval is not granted, the management is bound to reinstate the teachers and consequently pay them the wages and other benefits to which they are entitled to. In that light of above observations, these petitions can be disposed of by issuing the

following direction.

i) The respondent management within 15 days from today, to apply to respondent No. 4 for approval of termination of the petitioners on the ground that there is decrease in the number of students. If respondent No. 4 upholds the contentions of management that there is decrease in number of students and coonsequent decrease in number of division, then, the order of termination would be upheld.

ii) In the event respondent No. 2 comes to the conclusion that there can be two divisions even in the event there has been decrease in number of students, the management to reinstate the petitioners with full back wages and other consequential benefits including continuity of services. The back wages would be in terms of rules. If there is any dispute about back wages, it will be open to the petitioners or managements to approach respondent No. 4, whose decision would be final.

8. Rule made absolute in all the three petitions. There shall be no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]